IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3031 OF 2007

Baban Baburao Rasal & ors.... Petitioner

versus

Vinayak E. Chavan & ors..... Respondent.

Shri R.N. Sanghvi for the petitioner
Shri Anil Subramaniam for respondents.

CORAM; A.P. DESHPANDE, J.
DATED; 23RD JULY, 2007

P.C ;

1. The original plaintiff by filing the present writ petition questions the legality and validity of an order passed by the trial court recasting an issue, being issue no.4. The respondent applied for proper framing of the issue but the said application was rejected by the trial court. At a later stage, a review application is made pointing out that there is a mistake apparent on the face of the record in reading the case of the defendant no.1 as pleaded in the counter claim and hence a prayer for review of the earlier order is made. The court being of the view that the mistake in framing of issue no.4 was on account of error apparent on the face of the record, permitted recasting of the said issue. It is the case

of the respondent that by making counter claim, the respondent has sought partition and separate possession. The issue earlier framed was only in regard to possession without mention of partition. There was one more omission and the same relates to omission of two gat numbers. Having realised that the omission in relation to entitlement to claim for partition and more so in relation to two gat numbers, the court has permitted the review application by inserting the word ‘partition’ and by further inserting two gat numbers in the order.

2. Perused the order. The same does not call for any interference in exercise of writ jurisdiction, more so, when the evidence is closed and the matter is now at the final stage. Hence writ petition is summarily dismissed.

3. At this stage, the learned counsel for the petitioner submits that the counter claim as it stands is untenable. The same is not supported by payment of court fee stamp. The said question has not been raised before the trial court and hence not decided by the trial court. However, it shall be open for the petitioner to raise appropriate objection in the trial court in that regard.

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